MOTION TO ADVANCE BY APPELLANT

Comes now Appellant herein, by his counsel, and moves to advance this cause for early hearing and in support of the motion shows to the Court as follows:

Earl P. Cook as a qualified voter brought his action against Ben W. Fortson, Jr., as Secretary of the State of Georgia; J. Lon Duckworth, Chairman of the Democratic Executive Committee of the State of Georgia; Grace Cannington, Secretary of said Committee, and said Committee, for a Declaratory Judgment, and for additional relief by injunction, alleging that the rules of said Democratic Executive Committee and of the Fifth Congressional Democratic Committee imposed the "county unit rule" of election in a Democratic Congressional Primary held July 17, 1946; that said rules constituted a part of the election system under the laws of the State of Georgia, and praying the Court to declare said rules, and the statutes requiring or permitting the same, to be utterly unconstitutional and void, and to enjoin the defendants from action pursuant to said primary, for that said statutes and rules abridged the right and privilege of Appellant, and of each member of his class, to vote in said Congressional Primary election, for a candidate for Member of Congress, upon substantially an equal basis with each other elector in said Congressional District; said right being secured to Appellant by Article I, Section II, of the Constitution of the United States and guaranteed against abridgement or discrimination by Amendment XIV thereto.

Plaintiff-Appellant showed to a specially constituted three judge Court that he voted in said Primary election for the candidate who received both a plurality and a majority of all popular votes cast therein, but that, notwithstanding said candidate's election by popular vote, the authorities of the Democratic Party threatened to place upon the official ballot for use in the General Election to be held November 5, 1946, the name of the candidate who received a minority of the popular votes cast in said Primary election, but who received a plurality of the "county unit" votes.

Upon the trial and hearing of said cause, it was shown that the names of both the candidate who received the plurality and majority of popular votes cast in said primary election, and the candidate who received a minority of votes cast, but who received a plurality of the "county unit" votes, had been certified to the Secretary of State as candidates of the Democratic Party, and that, *pendente lite*, the Secretary of State had so certified both names to the Ordinaries of the Counties comprising the Fifth Congressional District.

Notwithstanding such certification, the candidate receiving the second highest number of popular votes, and the plurality of "county unit" votes, has entered an appeal from such certification to the Convention of the Democratic Party, to be held October 9th, 1946, and the candidate who received the plurality and majority of popular votes cast as aforesaid may, by said Convention, be declared not to be a candidate of the Democratic Party.

The three judge Court held in substance that the case was controlled by the majority opinion of this Court in *Colegrove* v. *Green* (No. 804, October Term, 1945), that the issues presented in the instant case were of a political nature and therefore not proper for judicial determination. Injunctive relief was denied.

The public interest is involved. The questions presented are of great importance. An early decision is desirable in order that the electors of the Fifth Congressional District of Georgia may know, if possible, before the General Election to be held November 5, 1946, who is the legally qualified candidate therein of the Democratic Party.

Wherefore, Appellant prays that the case be advanced upon the calendar and assigned for hearing at an early date.

Respectfully submitted,

ALEX. W. SMITH

CROOM PARTRIDGE

Counsel for Appellant.

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